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Simon Drugda

—Simon Drugda, PhD Candidate at the University of Copenhagen

On March 28, 2019, the Slovak Parliament amended the Constitution to cap the retirement age at 64. The imposition of retirement age is quite an unusual design feature in comparative constitutional law. In this post, I introduce the amendment and provide context for the change.

Retirement Cap and Minimum Wage

The amendment made two changes to socio-economic rights in the Slovak Constitution.

Article 36, which protects the rights of workers to fair and satisfactory working conditions, was extended to include the right to a minimum wage. Employers already had to pay their employees minimum wage before the amendment, so the change is symbolic. The minimum wage turned from a statutory obligation into a constitutional imperative. The specific level of the minimum wage will be set by a statute, which allows the Parliament to update the provision without the need for a constitutional amendment.

Article 39, which regulates the provision of pension and social benefits, contains a new provision that caps the retirement age. The retirement age has been capped at 64 years of age. Women can retire earlier if they have raised a child. Having raised one child, the pensionable age of the mother decreases by six months, by a year for two children, and by year and a half for three and more children. The Constitution now also emphasises that the state has a positive obligation to fund the provision of old age pension, although it "supports voluntary pension savings."

Comparative Practice: Rare Entrenchment of the Retirement Cap

Most constitutions contain provisions for the benefit of the elderly, who are more vulnerable and may need help from the state. The positive right to old age pension is usually limited to "the means at the disposal" of the state (Constitution of Albania, Article 591), and further qualification by a statute.

Entrenching the retirement age into the constitution, however, is quite an unusual design feature. Only the Constitutions of Thailand (60 years of age), Ecuador (65 yo), and Zimbabwe (70 yo) specify the retirement age. This may be because once in the constitution, the retirement age cap can be difficult to change. Constitutional amendment rules tend to require higher majorities and longer time to process.

Moreover, it will be politically costly to increase the retirement age after an amendment that has capped it. Such a change will be invariably unpopular with the segment of the population that is close to retirement.

Context: Legislating against Expertise

The change in Slovakia has been in the making for almost a year because the largest government party struggled to attract votes from the opposition to pass the amendment. All the while experts have criticised the proposal as populist and costly. Namely, the Council for Budget Responsibility (CBS) advised the Parliament against the change.

The main argument against the amendment was that it caps pensionable age too low, failing to balance adverse factors such as the ageing population and shrinking workforce against the prospects of an increase in life expectancy. Two things are certain, future generations will receive less in pension because of the amendment. Workers will have less time to save up for pension and live longer, so their saving will have to stretch. Second, future governments will struggle to repeal the amendment because increasing the retirement age is unpopular.

The largest governing party had itself designed the previous mechanism for the determination of the retirement age. To many, it was inexplicable why did the government turn against a system of its own making. The 2012 reform of the pension system linked the retirement age to the average life (in effect since 2017) expectancy as calculated by the Statistical Office. When life expectancy grew, so did the pensionable age. If it decreased, so did the retirement age. This mechanism was set up to reflect and closely follow the demographic changes in population. Records of Social Insurance Agency illustrate the incremental updating of the retirement age:

- The retirement age in 2017 was 62 years and 76 days.
- In the year 2018, the pensionable age increased to 62 years and 139 days.

The retirement age will only reach the new retirement cap sometime after the year 2030. Until then the automatic updating of the retirement age stays in place, even though the constitutional amendment comes into force already in July. The CBS has projected the costs of the retirement cap in the period between the years 2030 and 2067 at 138 billion EUR.

The government, however, did not provide any data to rebut the argument and adverse estimates by the CBS or justify the need for the retirement cap in the first place. The explanatory memorandum to the draft proposal simply stated that the change would "not affect the government budget," or at least in the short term, but without an impact assessment. This shows that the government has a high discount rate for the future. Securing short-term, electoral gains at heavy costs for the long-term health of the economy and future generation.

Conclusion: Legislating at the Expense of Future Generation

The devolved government in Wales recently established a new ministerial position: Future Generations Commissioner. The Commissioner represents people who have not been yet born in present political decisions.

In questions of financial sustainability, the CBS is such an institution in Slovakia. It was established in the wake of the economic crisis to hold a "mirror up to the government, [and facilitate] better decision-making in the Parliament," so that the fiscal burden passed on to future generations is not too high. The CBS should alert the people's representatives to risks to the long-term sustainability of public finance, such as policies that induce excessive growth of public debt. A study of the retirement age cap shows, however, that the people's representatives sometimes do not listen even to the very same institutions they have had established.

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